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BEFORE THE ARIZONA CORPORATI

FIDENCE DEVELOPMENT, LLC,

Complainant,

v.

ARIZONA-AMERICAN WATER COMPANY,

Respondent.

DOCKET NO.

W-01303A-09-0097

PROCEDURAL
CONFERENCE

At: Phoenix, Arizona

Date: June 2, 2009

Filed:

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Arizona Corporation Commission

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 1 of said
4 Commission, 1200 West Washington Street, Phoenix, Arizona,
5 commencing at 1:30 p.m., on the 2nd day of June, 2009.

6

7 BEFORE: YVETTE B. KINSEY, Administrative Law Judge

8

9 APPEARANCES:

10

11 For the Arizona Corporation Commission Staff:

12 Mr. Kevin Torrey
13 Staff Attorney, Legal Division
14 1200 West Washington Street
Phoenix, Arizona 85007

15 For the Complainant:

16 SNELL & WILMER
17 By: Messrs. Jeffrey W. Crockett and
Robert Metli
18 400 East Van Buren Street
Phoenix, Arizona 85004

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For the Respondent:

20

LEWIS AND ROCA LLP
21 By: Mr. Michael T. Hallam
22 40 North Central Avenue
Phoenix, Arizona 85004

23

24 KATE E. BAUMGARTH, RPR
Certified Reporter
25 Certificate No. 50582

1 ALJ KINSEY: Let's go on the record.

2 Good afternoon. I'm Administrative Law Judge
3 Yvette Kinsey, and this is the time set for the procedural
4 conference on the complaint filed by Fidence Development
5 against Arizona-American Water Company.

6 This is Docket No. W-01303A-09-0097.

7 May I have appearances for the record.

8 MR. CROCKETT: Good afternoon, Your Honor.
9 Jeff Crockett and Robert Metli with Snell & Wilmer
10 appearing on behalf of the complainant, Fidence
11 Development, LLC.

12 ALJ KINSEY: Thank you, Mr. Crockett.

13 And for the respondent?

14 MR. HALLAM: Good afternoon, Your Honor.
15 Michael Hallam with the law firm of Lewis and Roca on
16 behalf of the respondent, Arizona-American.

17 ALJ KINSEY: Thank you, Mr. Hallam.

18 And for Staff?

19 MR. TORREY: Your Honor, Kevin Torrey appearing
20 on behalf of Commission Staff.

21 ALJ KINSEY: Thank you.

22 And I wanted to call the procedural conference
23 because I wasn't sure if the parties had had a chance to
24 meet since the filing of the complaint and the answer to
25 try to see if there were any issues that may be settled in

1 this matter.

2 Mr. Crockett, have you all had a chance to meet
3 yet?

4 MR. CROCKETT: Your Honor, we have not had a
5 face-to-face meeting. We did have discussions, myself and
6 Mr. Tom Campbell, Mr. Hallam's partner, and, in fact,
7 Arizona-American presented to us a proposal to settle the
8 case, which we found to be lacking.

9 So that is as far as discussions have gone. We
10 have been approached again by the company about the idea
11 of having some discussions and perhaps having Commission
12 Staff involved in those discussions, and my client thinks
13 that that is a good idea and would participate in that.

14 ALJ KINSEY: Okay. Mr. Hallam, did you have
15 anything to add?

16 MR. HALLAM: Your Honor, I would generally concur
17 with Mr. Crockett's comments.

18 We have made overtures to continue meeting. His
19 client, for very good reasons, has been unavailable so we
20 haven't been able to do that in the past few weeks. But
21 we agree that it does make sense to sit down and continue
22 to discuss. My client is very willing to do that.

23 And, as Mr. Crockett indicated, we do think there
24 is some value in having Staff involved in that process.

25 We have asked Mr. Torrey to look into that, to see if

1 Staff would be willing to serve in that capacity, almost
2 as a -- a mediator isn't the right word, but there are
3 some unique issues in this case, so we think there is
4 value in having Staff's input into how these issues might
5 be treated.

6 ALJ KINSEY: Sounds good.

7 Mr. Torrey?

8 MR. TORREY: And, Your Honor, as you are aware,
9 Staff's general approach to complaint matters is not to
10 become involved where the parties are ably represented, as
11 in this case. But as Mr. Hallam has pointed out, there
12 are some issues in this particular complaint that Staff
13 may want to at least weigh in in some capacity,
14 specifically the issues regarding the arsenic surcharge
15 and timing of the tariff, when the tariff came into effect
16 and those issues.

17 So we are willing to at least discuss with the
18 parties in this case some sort of resolution and see if we
19 can facilitate some discussion.

20 ALJ KINSEY: Okay. And part of the reason that I
21 have requested Staff be here today is because I believe
22 that Staff could be helpful also in maybe helping to
23 resolve some of the issues.

24 I'm glad to hear that there has been a tentative
25 proposal made, even if it's just a starting point for you

1 all to work from, to see if you might be able to settle
2 some of the issues.

3 My thought was to give you about 30 days to see
4 where you are within that time frame and have you file a
5 joint filing just letting me know what the status of the
6 settlement discussions are. If you need more time or if
7 you think, you know, you can't reach an agreement, then
8 let me know at that time, and I will act accordingly.

9 Mr. Crockett?

10 MR. CROCKETT: Your Honor, I think that would be
11 an acceptable way to proceed.

12 We would -- would you contemplate directing a
13 procedural order that Staff would participate in those
14 discussions if requested by the parties?

15 ALJ KINSEY: I think Staff is on board with
16 participating, so I wasn't going to issue a procedural
17 order unless you all think that you really need one. But
18 from what I'm hearing from Mr. Torrey -- and he is shaking
19 his head in agreement -- that Staff is on board with
20 participating in this matter.

21 Is that correct, Mr. Torrey?

22 MR. TORREY: That's correct, Your Honor. We will
23 help work this out to the extent we can.

24 ALJ KINSEY: That sounds good.

25 MR. CROCKETT: And, Your Honor, another question.

1 We have not really engaged in much, if any, discovery at
2 this point.

3 As Mr. Hallam indicated, my client,
4 Mr. Chris Read, who is the principal in Fidence
5 Development, is originally from New Zealand, and he has
6 been back there for about a month tending to a father who
7 has a terminal illness and will probably be there for
8 another couple weeks before he returns to the state. That
9 being said, he has authorized me to move ahead and have
10 discussions.

11 We have had, just to give you just a bit of
12 background, these discussions with Arizona-American go
13 back probably close to two years, since I have been
14 involved with this, and over that period of time we have
15 not been able to make headway in resolving these issues.
16 And that is what precipitated the filing of the complaint.

17 In fact, it was indicated to us by
18 Arizona-American that because of the issues involved in
19 the case that really the only way we were going to resolve
20 those issues was if we filed the complaint. So it was
21 with -- I don't know with their blessing may be
22 overstating it a bit, but certainly they indicated that
23 they thought it was the appropriate way to go forward, and
24 that is what we have done.

25 Given that we have spent a couple years on this,

1 I would like to have a commitment that we will move
2 forward and get to a resolution of this in the not too,
3 hopefully, distant future. So with that in mind, we would
4 probably like to send a set of data requests out within
5 the next two or three weeks, understanding that we would
6 also be having discussions with Arizona-American in terms
7 of settling some of these issues and getting Staff's input
8 as well.

9 ALJ KINSEY: Okay. Mr. Hallam, any response to
10 that?

11 MR. HALLAM: No. I won't cross-examine
12 Mr. Crockett during his testimony, but I don't necessarily
13 disagree with anything he says or have any reason to
14 dispute. I was not involved over this past two years, so
15 I will take him at his word.

16 But I also don't think I have any way from
17 preventing him from sending data requests. So if that is
18 something that he thinks will move the process along, I
19 certainly would not object. Although, as I said, I
20 continue to believe that it does make sense for the
21 parties to sit down. As I said, there have been good
22 reasons we haven't been able to do that over the past two
23 weeks because his client has not been available, but I'm
24 optimistic that we can come to some resolution possibly
25 before he sends out the data requests.

1 ALJ KINSEY: Okay. That sounds good.

2 Any comment on that, Mr. Torrey?

3 MR. TORREY: Your Honor, just on behalf of Staff,
4 having read the complaint and answer, I don't know that
5 Staff will need data requests. I think the issues that
6 Staff has been asked to weigh in, I think there are a few
7 documents that we would need to look at that would clear
8 up what Staff needs. So from Staff's perspective, I don't
9 think we will be issuing data requests.

10 ALJ KINSEY: So not in a formal sense but just in
11 the discussions with the parties?

12 MR. TORREY: Correct, Your Honor.

13 ALJ KINSEY: Okay. And if for some reason you
14 get to a stalemate and you can't resolve discovery issues
15 or data requests, just immediately file something in the
16 docket, and we will have a procedural conference real fast
17 to take care of that.

18 I'm just going to leave you guys to your word and
19 hope that, you know, you have some kind of successful
20 resolution to at least some of the issues that have been
21 raised.

22 Mr. Crockett?

23 MR. CROCKETT: Your Honor, is it your expectation
24 then that the parties would file something in
25 approximately 30 days indicating where we are in the

1 settlement?

2 ALJ KINSEY: Right. Exactly. And either asking
3 for that the matter be set for hearing or that you need
4 additional time to try to reach an agreement.

5 Does that sound reasonable?

6 MR. HALLAM: It does, Your Honor. Should we
7 assume July 2nd?

8 ALJ KINSEY: Let's see. Where are we today?
9 Today is the 2nd. So July 2nd would be a Thursday, so
10 that is a perfectly good day. So July 2nd.

11 Do we need to discuss anything further today?

12 MR. TORREY: Nothing from Staff, Your Honor.

13 ALJ KINSEY: Okay. If there's nothing further,
14 then I will just wait for your pleadings on July 2nd or if
15 I hear from you before then, we will meet back here as
16 soon as we can.

17 All right. Thank you for coming.

18 (The hearing concluded at 1:42 p.m.)

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1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)

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7 I, KATE E. BAUMGARTH, RPR, Certified Reporter
8 No. 50582, for the State of Arizona, do hereby certify
9 that the foregoing printed pages constitute a full, and
10 accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.

13

14 WITNESS my hand this 7th day of June, 2009.

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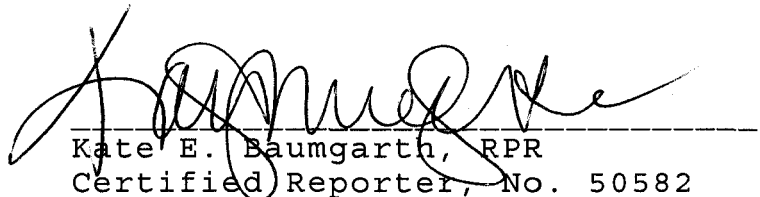
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